Secretary

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Federal Communications Commission
Office of the Secretary

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Business Data Services In an Internet Protocol Environment; Special Access For Price Cap Local Exchange Carriers,* WC Docket Nos. 16-143 & 05-25; RM-10593 – Notice of *Ex Parte* Presentations

Dear Ms. Dortch:

On Thursday, July 28, 2016, Mike Skrivan of FairPoint Communications and I briefed the following Commission personnel on FairPoint's position in the above-captioned proceedings: Claude Aiken, Amy Bender, Nick Degani, Travis Litman, Stephanie Weiner, Matt DelNero, Deena Shetler, Bill Dever, Bill Kehoe, Bill Layton, Eric Ralph and David Zesiger. The substance of FairPoint's presentation is briefly summarized below.

FairPoint is a midsize telephone company without affiliated mobile telecommunications operations. In FairPoint's price cap local exchange carrier ("LEC") territories in Maine, New Hampshire and Vermont (the northern New England or "NNE" service areas), FairPoint is facing robust and growing competition for business data services ("BDS"), steady or increasing operational costs, and declining revenues from switched access, special access, and universal service support. While revenues from Ethernet services is growing, the market is highly competitive and FairPoint's additional Ethernet revenues are not sufficient to replace the lost revenues from other services. At the same time, FairPoint is regulated as the telecommunications service provider of last resort ("POLR") with no right to reduce or discontinue any regulated service in unprofitable parts of its service territory, nor any ability to raise rates to recoup the company's forward-looking costs. In recent years, parts of FairPoint's service territory have become unprofitable, with negative return on investment. Under these pressures, FairPoint has focused on productivity, but has not recently experienced productivity

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gains. It cannot afford across-the-board rate reductions in special access and other business services, whether styled as a "productivity dividend" or otherwise. Such reductions very likely would cut into FairPoint's capital expenditures in the rural parts of its price cap territories, and also discourage other service providers from offering BDS in those areas.

FairPoint objects to the premise of the Further Notice that all price cap companies possess market power in the BDS sector. No evidence of such market power has been offered -- not in FairPoint's NNE territory at any rate. The record demonstrates neither control of bottleneck facilities by the incumbent LEC nor the ability to raise prices. In fact, FairPoint's prices and revenues consistently have declined over a period of years, while the overall market has grown, and customers increasingly have migrated to higher-bandwidth and more advanced services such as Metro Ethernet. Such trends support FairPoint's contention that the market for BDS is quite competitive and entry barriers are low. The facts on the ground bear this out – cable broadband operators, competitive fiber-based LECs, and others have entered FairPoint's service territories and gained substantial market share.

To the extent that a price cap LEC enjoys a monopoly position in any part of its price cap territory – and FairPoint does not believe that it does – the Commission ought to be ensuring that prices are set at levels that would allow the LEC or any competitor to recover its forward-looking costs. Holding prices below cost in high-cost areas only discourages investment and delays competitive market entry.

As the Commission is aware, imposing regulation on an emerging market actually can interfere with competitive forces. If the Commission is serious about appropriately regulating the BDS market, it should take the time to gain a more complete understanding of actual and potential competition, and the trends in prices and service innovation in the market. Failure to do so could have significant consequences for markets where LECs are struggling to maintain service, and actually reduce competition in the markets that have been growing in recent years.

A copy of the enclosed presentation was distributed in these meetings.

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Please direct any questions regarding this matter to me.

Very truly yours,

Karen Brinkmann
Counsel to FairPoint

Enclosure

cc: Stephanie Weiner
Claude Aiken
Amy Bender
Nick Degani
Travis Litman
Matt DelNero
Deena Shetler
Bill Dever
Bill Kehoe
Bill Layton
Eric Ralph
David Zesiger

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Business Data Services

FairPoint communications

www.FairPoint.com

Michael Skrivan
Karen Brinkmann

July 28, 2016

BDS Impact For FairPoint Price Cap Companies

- A reduction in BDS rates would **[REDACTED]** result in reduced investment in rural areas.

- FairPoint is not seeing productivity gains in BDS; mandatory rate reductions or "productivity offsets" would result in below-cost pricing:
  - Overall BDS revenue is decreasing
  - ARPU for BDS services is decreasing
  - Total Enterprise Revenue is decreasing
  - Demand for other services that use the network is decreasing
  - The basic network stays the same, with attendant repair, replacement, maintenance, taxes and ongoing operations, but without alternative revenue sources to make up the difference.

- Costs in areas that are likely to be deemed non-competitive are higher than costs in competitive areas. BDS rates should not be the same across all areas or capital investment will be discouraged.

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FairPoint BDS Revenue

Revenue Category	[redacted]	[redacted]	Six Months Ended June 30, 2015 (millions)	Percentage of Total Revenues
Ethernet	[redacted]	[redacted]	$46.3	10.8%
Special Access	[redacted]	[redacted]	$42.4	9.9%
Total BDS	[redacted]	[redacted]	$88.7	20.7%
Broadband & Advanced Svcs	[redacted]		$72.9	
Switched Access	[redacted]		$39.0	
Business Voice	[redacted]		$65.5	
Residential Voice	[redacted]		$114.5	
Regulatory Funding	[redacted]		$22.7	
Other	[redacted]		$24.7	
Total Non-BDS	[redacted]	[redacted]	$339.4	79.3%
Total	[redacted]	[redacted]	$428.1	100%

Impact of Potential BDS Rate Reduction on FairPoint Revenues

[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

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Free Cash Flow Used for Capital Expenditures

	2015	2014	2013
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

Trends in BDS Revenues

Service	2016	2015	2014	2013	2012
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

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Trends in Access Lines and Telephone Plant – NNE

	Residential Lines	Business Lines	Total NNE Lines	Telephone Poles
2008	[redacted]	[redacted]	[redacted]	[redacted]
2009	[redacted]	[redacted]	[redacted]	[redacted]
2010	[redacted]	[redacted]	[redacted]	[redacted]
2011	[redacted]	[redacted]	[redacted]	[redacted]
2012	[redacted]	[redacted]	[redacted]	[redacted]
2013	[redacted]	[redacted]	[redacted]	[redacted]
2014	[redacted]	[redacted]	[redacted]	[redacted]
2015	[redacted]	[redacted]	[redacted]	[redacted]

Productivity

- As can be seen in the prior slides, even though FairPoint's Ethernet revenues are on the rise, overall BDS revenues are declining and ARPU is declining.

- FairPoint faces competition but is not experiencing productivity gains in BDS.

- Total lines have declined by more than **[REDACTED]** since FairPoint acquired the former VZ Northern New England (NNE) properties, but as the Provider of Last Resort (POLR) we have the same infrastructure costs.

Competition & Market Power

- FairPoint's total BDS revenues are decreasing while the BDS market is growing.

- FairPoint's ARPUs for DS1s, DS3s and Ethernet services are declining, yet FairPoint's costs are not declining proportionally.

- FairPoint is losing market share.

- All of these are evidence that FairPoint lacks market power in the BDS sector. Barriers to entry are low. FairPoint can neither raise rates nor restrict output.

Relative Cost to Serve Rural Exchanges: the Maine Example

Cost of Service & Pricing Issues

- In a 2014 POLR rate case, FairPoint developed forward-looking costs for its Maine operations using a CostQuest model.

- It was estimated that **[REDACTED]** of the revenues in Maine are generated in the top **[REDACTED]** exchanges, out of 144 exchanges.

- The remaining areas are **[REDACTED]** more expensive to serve.

- Rates in the non-competitive exchanges should not be set based on rates in competitive exchanges, because of those cost differences.

- BDS in competitive areas is priced at forward-looking cost for those areas. If the rates in competitive (lower-cost) exchanges must be used in non-competitive exchanges, the latter will be priced significantly below cost, deterring market entry.

Takeaways

- Mandatory rate reductions without regard to cost will create disincentives to investment
- Regulated rates in non-competitive areas should not be based on rates in (lower cost) competitive areas
- Midsize price cap companies such as FairPoint do not possess market power nor merit mandatory rate reductions